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Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

March 19, 1980

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ARIZONA ATTORNEY GENERAL

Mr. F. Mark Edson  
Executive Director  
State Board of Technical Registration  
Suite 315, 1645 West Jefferson  
Phoenix, Arizona 85007

Re: I80-047 (R80-040)

Dear Mr. Edson:

We are writing in response to your letter of November 28, 1979, in which you requested our opinion regarding an apparent conflict between A.R.S. § 32-142 and A.R.S. § 34-102.A You specifically want to know what the Board's jurisdiction is with respect to these provisions.

The statutes in question provide as follows:

A.R.S. § 32-142 states:

A. Drawings, plans, specifications and estimates for public works of the state or a political subdivision thereof involving architecture, engineering, assaying, geology, landscape architecture or land surveying, shall be prepared by or under the personal direction of, and the construction of such works shall be executed under the direct supervision of a qualified registrant within the category involved.

B. Surveys, maps or assays required in connection with public land surveying or assaying shall be made by or under the personal direction of a qualified registrant.

A.R.S. § 34-102 states:

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A. When authority is given by law to an agent to construct a state, county or other building or structure, or additions to or alterations of existing buildings or structures, an architect or engineer or both, as warranted by the type of construction, shall be employed by the agent if the work is deemed of a nature warranting such employment.

We find that these provisions do not conflict. As you noted in your letter, A.R.S. § 34-102 gives some discretion to public agents in deciding whether an architect or engineer should be employed for work on public buildings and structures. A.R.S. § 32-142 says that specified kinds of work done on public works projects must be performed by a qualified registrant. An agent thus makes an initial determination as to whether the work to be done "is deemed of a nature warranting" the employment of an architect or engineer.<sup>1/</sup> Once he decides that such employment is warranted, he must employ a qualified registrant pursuant to A.R.S. § 32-142.

With respect to your regulatory authority, the relevant portions of A.R.S. § 32-145 provide:

Any person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Practices, offers to practice or by any implication holds himself out as qualified to practice as an architect, assayer, engineer, geologist, landscape architect, or land surveyor, who is not registered as provided by this chapter.

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<sup>1/</sup> A.R.S. § 34-102.A provides that an architect or an engineer or both shall be employed by the authorized agent "if the work is deemed of a nature warranting such employment." Thus, the agent must make the initial determination of whether the type of work warrants the employment of a professional architect or engineer. The word "deemed" within the meaning of A.R.S. § 34-102.A has been construed by the Arizona Court of Appeals to mean that the agent shall have the discretion in deciding whether to employ an architect or engineer, but that such discretion shall require "'deliberate action based on evidence and standards.'" [Citations omitted.] Secrist v. Diedrich, 6 Ariz.App. 102, n. 2 at 106, 430 P.2d 448 (1967).

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5. Otherwise violating any provision  
of this chapter.

Although you must allow for an agent's exercise of discretion under A.R.S. § 34-102, you may take appropriate action against a person who is in fact practicing any of the enumerated professions without being registered. This would include a person hired pursuant to A.R.S. § 34-102.A. You do not have authority to proceed against those agents who exercise discretion under A.R.S. § 34-102.A, except insofar as the agents may be deemed to have violated A.R.S. § 32-142 by having drawings, plans, etc., prepared or supervised by a person other than a qualified registrant when, in your judgment, a registrant should have been employed.

Sincerely,



BOB CORBIN  
Attorney General

BC/mm